

Introduced by Senator Vasconcellos

February 21, 2002

An act to amend Sections 4140, 4142, 4145, and 4147 of, and to repeal Section 4146 of, the Business and Professions Code, and to amend Sections 11364 and 11364.5 of the Health and Safety Code, relating to hypodermic needles and syringes.

LEGISLATIVE COUNSEL'S DIGEST

SB 1785, as introduced, Vasconcellos. Hypodermic needles and syringes.

(1) Existing law regulates the sale, possession, and disposal of hypodermic needles and syringes. Under existing law, a prescription is required to purchase a hypodermic needle or syringe for human use, except to administer adrenaline or insulin.

This bill would authorize a licensed pharmacist to sell hypodermic needles or syringes to a person without a prescription under specified conditions.

(2) Existing law requires a person to properly establish his or her identity in order to purchase a needle or syringe. Existing law requires a pharmacist to keep detailed records of nonprescription sales of hypodermic needles and syringes.

This bill would delete both the identity requirement and the requirement that a pharmacist keep detailed records of nonprescription sales of hypodermic needles and syringes.

(3) Existing law prohibits the possession and sale of drug paraphernalia.

This bill would authorize a person to possess up to 30 hypodermic needles or syringes if acquired through an authorized source.

(4) Existing law prohibits the disposal of hypodermic needles and syringes in certain cases.

This bill would increase the criminal penalty for improper disposal of hypodermic needles and syringes in certain cases, thereby imposing a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Injection drug use is linked to 19 percent of all AIDS cases
4 and one half of all hepatitis C cases in California. Injection drug
5 users become infected and transmit diseases such as HIV and
6 hepatitis C to others by sharing blood-contaminated syringes.

7 (b) The lifetime cost of treating one person with AIDS is
8 estimated to be over one hundred ninety-five thousand dollars
9 (\$195,000).

10 (c) According to the California Department of Health Services,
11 500,000 to 600,000 Californians are estimated to have contracted
12 hepatitis C, a disease for which there is no known cure.

13 (d) The United States Public Health Service and the Centers for
14 Disease Control and Prevention recommend that injection drug
15 users who cannot or will not stop injecting drugs use a sterile
16 needle for every injection as a public health measure to limit
17 blood-borne disease transmission.

18 (e) Current California law requiring a prescription for the
19 purchase of syringes and restricting the possession of syringes
20 presents a formidable obstacle to disease prevention and threatens
21 public safety. California is only one of six states that requires a
22 prescription to purchase a syringe.

23 (f) Legislation to permit the pharmacy-based sale of sterile
24 syringes without a prescription would reduce new cases of HIV,

1 hepatitis C, and other blood-borne diseases and would ultimately
2 save California millions of dollars in medical costs.

3 SEC. 2. This act shall be known and may be cited as the
4 Syringe Pharmacy Sale and Disease Prevention Act.

5 SEC. 3. Section 4140 of the Business and Professions Code
6 is amended to read:

7 4140. No person ~~shall~~ *may* possess or have under his or her
8 control any hypodermic needle or syringe except when acquired
9 in accordance with this article.

10 SEC. 4. Section 4142 of the Business and Professions Code
11 is amended to read:

12 4142. (a) Except as otherwise provided by this article, no
13 hypodermic needle or syringe *for human use* shall be sold at retail
14 ~~except upon the prescription of a physician, dentist, veterinarian,~~
15 ~~or podiatrist~~ *if sold in a licensed pharmacy by either a pharmacist*
16 *or a person licensed by the board of pharmacy to sell or furnish*
17 *hypodermic needles or syringes.*

18 (b) *A person who is 18 years of age or older may purchase up*
19 *to 30 hypodermic needles or syringes per transaction without a*
20 *prescription for personal use pursuant to subdivision (a).*

21 (c) *A licensed pharmacy that sells hypodermic needles and*
22 *syringes at retail for human use shall do the following:*

23 (1) *Store hypodermic needles and syringes in a manner that*
24 *makes them available only to authorized personnel, and not openly*
25 *available to customers.*

26 (2) *At the time of purchase, provide a purchaser with*
27 *information regarding the safe disposal of hypodermic needles and*
28 *syringes that includes a notice of penalties for the improper*
29 *disposal of hypodermic needles and syringes on playgrounds or*
30 *school grounds pursuant to Section 4147.*

31 (d) *A licensed pharmacy that sells hypodermic needles and*
32 *syringes at retail for human use may do the following:*

33 (1) *At the time of purchase, provide a purchaser with public*
34 *health information such as information about drug addiction, the*
35 *availability of local substance abuse treatment that includes a*
36 *telephone number to call for assistance, and information on the*
37 *transmission of blood-borne diseases, including information*
38 *about the prevention, testing, and treatment of HIV and hepatitis*
39 *C.*

(2) *Provide an onsite safe syringe disposal program that meets the requirements of Section 4147.*

SEC. 5. Section 4145 of the Business and Professions Code is amended to read:

4145. Notwithstanding any other provision of law, a pharmacist or physician may, without a prescription or a permit, furnish hypodermic needles and syringes for human use ~~in the administration of insulin or adrenaline~~; a pharmacist or veterinarian may, without a prescription or license, furnish hypodermic needles and syringes for use on poultry or animals; and a person may, without a prescription or license, obtain hypodermic needles and syringes from a pharmacist or physician for human use ~~in the administration of insulin or adrenaline~~, or from a pharmacist, veterinarian, or licenseholder, for use on poultry or animals; ~~if all of the following requirements are met:~~

~~(a) No needle or syringe shall be furnished to a person who is unknown to the furnisher and unable to properly establish his or her identity.~~

~~(b) The furnisher, at the time furnishing occurs, makes a record of the furnishing in the manner required by Section 4146.~~

SEC. 6. Section 4146 of the Business and Professions Code is repealed.

~~4146. Any furnishing of a hypodermic syringe or hypodermic needle without a prescription shall, at the time of furnishing, be recorded in a book by the furnisher. The record of furnishing shall consist of the date and hour of the furnishing, the type or kind, size, and quantity of syringe or needle furnished, the purpose and use for which the needle or syringe was obtained, the signature of the furnisher, and the signature and address of the person to whom the needle or syringe was furnished. The record book shall be available for inspection by any authorized officer of the law.~~

SEC. 7. Section 4147 of the Business and Professions Code is amended to read:

4147. (a) *For purposes of this section, “playground” means any park or outdoor recreational area specifically designed to be used by children that has play equipment installed, or any similar facility located on public or private school grounds or on city or county parks.*

(b) Any hypodermic needle or syringe that is to be disposed of, shall be contained, treated, and disposed of, pursuant to Part 14

(commencing with Section 117600) of Division 104 of the Health and Safety Code.

(c) It shall be unlawful to discard or dispose of a hypodermic needle or syringe upon the grounds of a playground or any public or private elementary, vocational, junior high, or high school.

(d) A person who knowingly violates subdivision (c) is guilty of a misdemeanor, and upon conviction shall be punished by a fine or not less than two hundred dollars (\$200) and not more than two thousand dollars (\$2,000), or by imprisonment of up to six months, or by both that fine and imprisonment.

(e) Subdivision (c) shall not apply to the containment, treatment, and disposal of medical sharps waste from medical care or first aid services rendered on school grounds, nor to the containment, treatment, and disposal of hypodermic needles or syringes used for instructional or educational purposes on school grounds.

SEC. 8. Section 11364 of the Health and Safety Code is amended to read:

11364. (a) It is unlawful to possess an opium pipe or any device, contrivance, instrument, or paraphernalia used for unlawfully injecting or smoking (1) a controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, specified in subdivision (b) or (c) of Section 11055, or specified in paragraph (2) of subdivision (d) of Section 11055, or (2) a controlled substance which is a narcotic drug classified in Schedule III, IV, or V.

(b) This section shall not apply to supplies of up to 30 hypodermic needles or syringes acquired from authorized sources, including, but not limited to, pharmacies, hospitals, and public health clinics, and possessed solely for personal use.

SEC. 9. Section 11364.5 of the Health and Safety Code is amended to read:

11364.5. (a) Except as authorized by law, ~~no~~ a person shall not maintain or operate ~~any~~ a place of business in which drug paraphernalia is kept, displayed or offered in any manner, sold, furnished, transferred or given away unless such drug paraphernalia is completely and wholly kept, displayed or offered within a separate room or enclosure to which persons under the age

1 of 18 years not accompanied by a parent or legal guardian are
2 excluded. Each entrance to such a room or enclosure shall be
3 signposted in reasonably visible and legible words to the effect that
4 drug paraphernalia is kept, displayed or offered in such room or
5 enclosure and that minors, unless accompanied by a parent or legal
6 guardian, are excluded.

7 (b) Except as authorized by law, no owner, manager, proprietor
8 or other person in charge of any room or enclosure, within any
9 place of business, in which drug paraphernalia is kept, displayed
10 or offered in any manner, sold, furnished, transferred or given
11 away shall permit or allow any person under the age of 18 years
12 to enter, be in, remain in or visit such room or enclosure unless such
13 minor person is accompanied by one of his or her parents or by his
14 or her legal guardian.

15 (c) Unless authorized by law, no person under the age of 18
16 years shall enter, be in, remain in or visit any room or enclosure in
17 any place of business in which drug paraphernalia is kept,
18 displayed or offered in any manner, sold, furnished, transferred or
19 given away unless accompanied by one of his or her parents or by
20 his or her legal guardian.

21 (d) As used in this section, “drug paraphernalia” means all
22 equipment, products, and materials of any kind which are intended
23 for use or designed for use, in planting, propagating, cultivating,
24 growing, harvesting, manufacturing, compounding, converting,
25 producing, processing, preparing, testing, analyzing, packaging,
26 repackaging, storing, containing, concealing, injecting, ingesting,
27 inhaling, or otherwise introducing into the human body a
28 controlled substance. “Drug paraphernalia” includes, but is not
29 limited to, all of the following:

30 (1) Kits intended for use or designed for use in planting,
31 propagating, cultivating, growing or harvesting of any species of
32 plant which is a controlled substance or from which a controlled
33 substance can be derived.

34 (2) Kits intended for use or designed for use in manufacturing,
35 compounding, converting, producing, processing, or preparing
36 controlled substances.

37 (3) Isomerization devices intended for use or designed for use
38 in increasing the potency of any species of plant which is a
39 controlled substance.



1 (4) Testing equipment intended for use or designed for use in
2 identifying, or in analyzing the strength, effectiveness or purity of
3 controlled substances.

4 (5) Scales and balances intended for use or designed for use in
5 weighing or measuring controlled substances.

6 (6) Diluents and adulterants, such as quinine hydrochloride,
7 mannitol, mannite, dextrose, and lactose, intended for use or
8 designed for use in cutting controlled substances.

9 (7) Separation gins and sifters intended for use or designed for
10 use in removing twigs and seeds from, or in otherwise cleaning or
11 refining, marijuana.

12 (8) Blenders, bowls, containers, spoons, and mixing devices
13 intended for use or designed for use in compounding controlled
14 substances.

15 (9) Capsules, balloons, envelopes, and other containers
16 intended for use or designed for use in packaging small quantities
17 of controlled substances.

18 (10) Containers and other objects intended for use or designed
19 for use in storing or concealing controlled substances.

20 (11) Hypodermic syringes, needles, and other objects intended
21 for use or designed for use in parenterally injecting controlled
22 substances into the human body.

23 (12) Objects intended for use or designed for use in ingesting,
24 inhaling, or otherwise introducing marijuana, cocaine, hashish, or
25 hashish oil into the human body, such as the following:

26 (A) Metal, wooden, acrylic, glass, stone, plastic, or ceramic
27 pipes with or without screens, permanent screens, hashish heads,
28 or punctured metal bowls.

29 (B) Water pipes.

30 (C) Carburetion tubes and devices.

31 (D) Smoking and carburetion masks.

32 (E) Roach clips, meaning objects used to hold burning
33 material, such as a marijuana cigarette that has become too small
34 or too short to be held in the hand.

35 (F) Miniature cocaine spoons, and cocaine vials.

36 (G) Chamber pipes.

37 (H) Carburetor pipes.

38 (I) Electric pipes.

39 (J) Air-driven pipes.

40 (K) Chillums.

1 (L) Bongs.

2 (M) Ice pipes or chillers.

3 (e) In determining whether an object is drug paraphernalia, a
4 court or other authority may consider, in addition to all other
5 logically relevant factors, the following:

6 (1) Statements by an owner or by anyone in control of the
7 object concerning its use.

8 (2) Prior convictions, if any, of an owner, or of anyone in
9 control of the object, under any state or federal law relating to any
10 controlled substance.

11 (3) Direct or circumstantial evidence of the intent of an owner,
12 or of anyone in control of the object, to deliver it to persons whom
13 he or she knows, or should reasonably know, intend to use the
14 object to facilitate a violation of this section. The innocence of an
15 owner, or of anyone in control of the object, as to a direct violation
16 of this section shall not prevent a finding that the object is intended
17 for use, or designed for use, as drug paraphernalia.

18 (4) Instructions, oral or written, provided with the object
19 concerning its use.

20 (5) Descriptive materials, accompanying the object which
21 explain or depict its use.

22 (6) National and local advertising concerning its use.

23 (7) The manner in which the object is displayed for sale.

24 (8) Whether the owner, or anyone in control of the object, is a
25 legitimate supplier of like or related items to the community, such
26 as a licensed distributor or dealer of tobacco products.

27 (9) The existence and scope of legitimate uses for the object in
28 the community.

29 (10) Expert testimony concerning its use.

30 (f) This section shall not apply to any of the following:

31 (1) Any pharmacist or other authorized person who sells or
32 furnishes drug paraphernalia described in paragraph (11) of
33 subdivision (d) upon the prescription of a physician, dentist,
34 podiatrist or veterinarian *or pursuant to Section 4142 or 4145 of*
35 *the Business and Professions Code.*

36 (2) Any physician, dentist, podiatrist or veterinarian who
37 furnishes or prescribes drug paraphernalia described in paragraph
38 (11) of subdivision (d) to his or her patients.



1 (3) Any manufacturer, wholesaler or retailer licensed by the
2 California State Board of Pharmacy to sell or transfer drug
3 paraphernalia described in paragraph (11) of subdivision (d).

4 (g) Notwithstanding any other provision of law, including
5 Section 11374, violation of this section shall not constitute a
6 criminal offense, but operation of a business in violation of the
7 provisions of this section shall be grounds for revocation or
8 nonrenewal of any license, permit, or other entitlement previously
9 issued by a city, county, or city and county for the privilege of
10 engaging in such business and shall be grounds for denial of any
11 future license, permit, or other entitlement authorizing the conduct
12 of such business or any other business, if the business includes the
13 sale of drug paraphernalia.

14 SEC. 10. The Legislative Analyst shall review the following
15 programs for public acceptance, efficacy, and cost, and report his
16 or her findings to the Legislature: the New York State Department
17 of Health Expanded Syringe Access Demonstration Program
18 (ESAP) safety insert recommendations on safe syringe disposal,
19 the Rhode Island State Department of Public Health-sponsored
20 syringe disposal programs (Sharps Smart), and the San Francisco
21 Safe Needle Disposal Program (SFSNDP). The Legislative
22 Analyst shall also review recent literature on syringe disposal
23 programs to identify more effective programs than those in New
24 York, Rhode Island, or San Francisco. Once the Legislative
25 Analyst has identified the most effective program, he or she shall
26 report the findings to the Legislature with an approximate cost of
27 implementing the program statewide and an identified funding
28 stream.

29 SEC. 11. No reimbursement is required by this act pursuant
30 to Section 6 of Article XIII B of the California Constitution
31 because the only costs that may be incurred by a local agency or
32 school district will be incurred because this act creates a new crime
33 or infraction, eliminates a crime or infraction, or changes the
34 penalty for a crime or infraction, within the meaning of Section
35 17556 of the Government Code, or changes the definition of a
36 crime within the meaning of Section 6 of Article XIII B of the
37 California Constitution.